Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-20, 96, and 97 are pending in the application, with claims 1, 96, and 97 being the independent claims. Claims 21-95 were previously cancelled. Claims 1, 10, 15, 16, 96 and 97 are currently amended to clarify Applicants' techniques. Support for these amendments is found at least at paragraphs [0007], [0008], [0038], [0040], and [0074]of the instant specification. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Accordingly, based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1-6, 11, 16, 17, 96, and 97

On pages 3-6 of the Office Action issued November 5, 2007, claims 1-6, 11, 16, 17, 96, and 97 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 5,873,069 to Reuhl *et al.* (hereinafter "Reuhl") in view of U.S. Patent No. 6,102,969 to Christianson (hereinafter "Christianson"). On page 3 of the Office Action, the Examiner states that these claims are rejected under "35 U.S.C. § 102(e)" [sic] over Reuhl and in view of Christianson. Applicants assume the Examiner's rejection for these claims is under 35 U.S.C. § 103(a) as indicated by the Examiner on page 2 of the Office Action. Applicants respectfully traverse this rejection.

Claim 1 recites a method for use in marketing comprising:

> detecting, at a remote computer, product purchase information of a
> plurality of different retailers from points-of-sale associated with the
> respective retailers, the product purchase information including at least
> purchase price information, the remote computer located remote from the
> retailers;
> receiving, at the remote computer, a shopping list of a customer, the
> shopping list including at least one item; and
> in response to receiving the shopping list, initiating communication to the
> customer via the remote computer, of purchase price information
> associated with the at least one item from the shopping list for the
> plurality of retailers.

On page 3 of the Office Action, the Examiner states that the purchase price

detection features of claim 1 are disclosed in Reuhl in lines 18-28 of column 3, lines 64-

68 of column 8, lines 15-32 of column 10, lines 11-23 of column 11, and Fig. 8.

Applicants are unable to identify in the sections of Reuhl and Christianson cited by the

Examiner, or in other sections, any teaching or suggestion upon which the elements of

"*detecting*, at a remote computer, product purchase information of a plurality of *different*

retailers from points-of-sale associated with the respective retailers, the product purchase

information including at least *purchase price* information", as recited in claim 1

(Emphasis added). In contrast, Reuhl's system requires a user to *input* product and price

data of a competitor, including the "competitor's *shopped* prices and *advertised* prices"

(Reuhl, col. 4, lns. 14-16 and 30-35, col. 9, lns. 1-4, col. 15, lns. 11-24 and 34-44, col.

16, lns. 5-27) (Emphasis added).

On page 4 of the Office Action, the Examiner concedes that Reuhl does not

disclose "detecting price information of a plurality of different retailers from points-of-

sale associated with the respective retailers," as recited in claim 1. Christianson does not

cure the deficiencies of Reuhl with regards to claim 1. While Christianson may disclose

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returning prices for items for sale "upon user request" for "a given query", "forwarding

the query to the most relevant information sources, understanding the responses returned

from each source, and integrating and intelligently presenting the query results to the

user" (Christianson, col. 2, lns. 54-61, col. 6, lns. 26-27), Christianson does not teach or

suggest *detecting*, at a remote computer, *product purchase information* of a plurality of

different retailers from points-of-sale associated with the respective retailers, the product

purchase information including at least *purchase price* information, as recited in claim 1

(Emphasis added).

In contrast to the above recited purchase price detection features of claim 1,

Christianson requires that "a query router receives as input a user query expressed as a

list of words or keywords" (Christianson, col. 14, lns. 44-47). Further, Christianson is

limited to returning information such as "product name, model, and price" for an item

offered for sale (Christianson, col. 6, lns. 7-11 and 32-37) and contains no teaching or

disclosure of detecting and communicating *product purchase* information that includes

purchase price information, as recited in claim 1.

On page 3 of the Office Action, the Examiner characterizes Reuhl's "enterprise-

wide" price processing system for "a retailer with many locations" (Reuhl, col. 3, lns.

18-23) as detecting product purchase information from a plurality of *different* retailers,

on a computer remote from the retailers, as recited in claim 1. Applicants disagree with

this characterization and submit that Reuhl's system is limited to "price management and

a central system for a plurality of goods in a plurality of markets" for a single retailer that

"prices and reprices items responsive to market changes, such as competitors' shopped

prices and competitors' ad price" wherein competitor's advertised and shopped prices are

inputted into the centralized system (Reuhl, col. 3, lns. 18-22, col. 4, lns. 14-19, col. 18, lns. 28-33).

In the Advisory Action issued January 14, 2008, the Examiner asserts "that Reuhl with Christianson's use of shopbots teach the limitations of the claims as recited." Applicants respectfully disagree with this characterization and traverses for the reasons stated below.

Christianson's netbots for shopping, or shopbots "include a specific input query screen" (Christianson, col. 6, lns. 23-27 and FIGs. 2A and 2B) for users to enter search criteria for products. Searches entered on Christianson's shopbots return product names and advertised prices for the products (Christianson, col. 6, lns. 7-11 and 32-37), but Christianson does not teach or suggest detecting product purchase information including at least purchase price information of a plurality of different retailers from points-of-sale associated with the respective retailers, as recited in claim 1.

In Reuhl, an advertised price is defined as "a price for an item described or shown in an advertisement, written or otherwise, usually valid for a prescribed time period" (Reuhl, col. 6, lns. 57-61), and is not the purchase price of an item, as recited in claim 1. In contrast to Reuhl, claim 1 recites "*detecting*" product purchase information that includes at least *purchase price* information "at a remote computer" (Emphasis added). The shopped price is defined in Reuhl as "the price on the competitor's price tag on an item" (Reuhl, col. 6, lns. 54-57). In Reuhl's system, the user must input product and price data using a plurality of entry screens, as described, for example, at Col. 14, line 65 to Col. 15, line 24, Col. 15, lines 34-44, and Col. 16, lines 5-27 of Reuhl.

Although Reuhl may disclose a system that automatically adjusts a retailer's prices in response to user-inputted competitor's advertised and shopped prices, inputting competitor prices into a plurality of entry screens (Reuhl, col. 4, lns. 14-16, col. 9, lns. 43-48, col. 11, lns. 11-26 and 34-44, FIGs. 16, 18, and 19), Reuhl lacks any teaching or suggestion of "detecting" "product purchase information at a plurality of different retailers from points-of-sale associated with the respective retailers", as recited in claim 1.

Applicants respectfully submit that neither Christianson or Reuhl, alone or in the alleged obvious combination, teach detecting product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers, wherein the product purchase information includes at least purchase price information, as recited in claim 1. Accordingly, Applicants assert that claim 1 is patentable over Reuhl and Christianson, alone or in the allegedly obvious combination. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claim 1, and find it allowable over the applied references. Also, at least based on their respective dependencies to claim 1, claims 2-20 should be found allowable over the applied reference, as well as for their individual respective distinguishing features. Dependent claims 2-20, which depend upon independent claim 1, are allowable for at least being dependent from an allowable independent claim, in addition to their own respective distinguishing features. See *In Re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) and M.P.E.P. § 2143.03. Accordingly, Applicants respectfully request this rejection be removed and that these claims be passed to allowance.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection of these claims, and find them allowable over the applied references.

Claims 96 and 97

Independent claims 96 and 97 are patentable over the applied references for reasons similar to those set forth above with respect to independent claim 1, and further in view of its own respective features.

More particularly, claim 96 recites a remote computer comprising:

> a processor;
> a memory accessible by the processor; and
> a computer program stored in the memory, the computer program operable to be executed on the processor and further operable to:
> detect product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers located remotely from the remote computer, the product purchase information including at least purchase price information comprising at least the price at which at least one item was purchased from each of the retailers;
> receive a shopping list of a customer, the shopping list including at least one item; and
> in response to receiving the shopping list, initiate communication to the customer of purchase price information associated with the at least one item for each of the retailers.

Claim 97 recites an article comprising a medium for storing instructions that enable a remote computer to:

> detect product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers located remotely from the remote computer, the product purchase information including at least purchase price information comprising at least the price at which at least one item was purchased from each of the retailers;
> receive a shopping list of a customer, the shopping list including at least one item; and

in response to receiving the shopping list, initiate communication to the customer of purchase price information associated with the at least one item for each of the retailers.

The computer program and article of claims 96 and 97, respectively, enable a remote computer to detect product purchase information of a plurality of different retailers from points-of-sale associated with the respective retailers located remotely from the remote computer, wherein the purchase price information includes at least the price at which the at least one item was purchased at each of the retailers. Thus, for at least the reasons stated above, Applicants respectfully submit that claims 96 and 97 are patentable over Reuhl and Christianson, and request that the rejection of these claims be reconsidered and withdrawn.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 96 and 97.

Claims 7-10

On page 7 of the Office Action, claims 7-10 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Reuhl in view Christianson and in further view of U.S. Patent Application Publication No. 2001/0014868 to Herz *et al.* (hereinafter "Herz"). Applicants respectfully traverse this rejection.

Claims 7-10, which depend from independent claim 1, are also patentable over the applied references for reasons similar to those set forth above with respect to Applicants' claim 1, and further in view of their own respective features.

On page 7 of the Office Action, the Examiner concedes that Reuhl and Christianson do not disclose storing product purchase information from the plurality of

retailers in association with customer identification numbers, but states that Herz teaches

customizing prices and promotions tailored to shoppers by storing product information

from a plurality of stores in association with customer identification numbers. Herz does

not cure the deficiencies of Reuhl and Christianson with regards to claims 7-10.

Although Herz may disclose a system to determine customized prices and promotions to

offer to a shopper, wherein the shopper is identified by a name or number (Herz,

paragraph [0024]), Herz does not teach or suggest storing product purchase information

from a plurality of retailers in association with customer identification numbers, as

recited in claim 7.

Claims 8-10, which depend from dependent claim 7, are also patentable over the

applied references for reasons similar to those set forth above with respect to claim 7,

and further in view of their own distinguishing features.

Accordingly, Applicants assert that claims 7-10 are patentable over the applied

references, alone or in any rational combination. Therefore, Applicants respectfully

request reconsideration and withdrawal of the rejection of claims 7-10.

Claims 12-15 and 18-20

On page 8 of the Office Action, claims 12-15 and 18-20 were rejected under 35

U.S.C. § 103(a) as allegedly being unpatentable over Reuhl in view of the Examiner's

Official Notice. Applicants respectfully traverse this rejection.

Claims 12-15 and 18-20, which depend from independent claim 1, are also

patentable over the applied references for reasons similar to those set forth above with

respect to claim 1, and further in view of their own respective distinguishing features.

On page 8 of the Office Action, the Examiner concedes that Reuhl and Christianson do not teach communicating an incentive comprising a discount on at least one item in a customer's shopping list or communicating a discount on an item competitive with the at least one item. Applicants submit that the Examiner's Official Notice does not provide the teachings missing from Reuhl and Christianson.

In the "Response to Arguments" section of the Office Action on page 10 of the Office Action, the Examiner states that "using discounts as incentives is considered admitted as prior art." Applicants respectfully submit that the Examiner appears to have misinterpreted Applicants' previous arguments in relation to the Examiner's Official Notice. Applicants disagree with the Examiner's conclusion and reasoning on page 10 of the Office Action and dispute the Examiner's statement on page 8 of the Office Action that using the types of incentives recited in claims 12-15 and 18-20 are "old and well known in the art" at the time of Applicants' invention. Applicants disputed the Official Notice in the previous Office Action regarding communication of incentives such as discounts on a product competitive with an item in a customer's shopping list, as recited in claims 12-15 and the electronic discounts recited in claims 18-20.

Claims 12-15 recite marketing methods for comparing and communicating prices and incentives by computer wherein the price of a competitive item comprises the purchase price at which the competitive item was purchased within an hour of the receipt of a customer's shopping list including an item. Claims 18-20 recite marketing methods for communicating incentives by computer wherein the incentives include one or more of a notification of a future electronic discount, a redeemable coupon, and a redeemable

coupon on a product determined to be a product more frequently purchased by a

customer than other products purchased by the customer.

Applicants respectfully submit that communicating incentives such as discounts

on a product competitive with an item in a customer's shopping list, as recited in claims

12-15 and 18-20 was not well known in the art at the time, and Applicants submit that

the above recited features of claims 12-15 and 18-20 were not well known or

conventional in the art or obvious.

Applicants respectfully point out that pursuant to M.P.E.P. § 2143.01(A), the

Examiner cannot remedy the deficiency as noted above in the teaching of the Reuhl

reference merely by asserting what is "very common" in the art; rather, the Patent Office

must demonstrate all claim limitations based on substantial evidentiary support. See *In*

re Zurko, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001). For example, this section of the

M.P.E.P. states (emphasis added):

> [T]he facts asserted to be well-known, or to be common knowledge in the
> art **are capable of instant and unquestionable demonstration** as being
> well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091,
> 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record
> which may be taken by the examiner must be **"capable of such instant
> and unquestionable demonstration as to defy dispute"** (citing *In re
> Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

Applicants submit that this proof is not found in the conclusory rejection made by

the Examiner, and thus the Examiner's use of Official Notice is improper. Applicants

remind the Examiner that the Administrative Procedure Act requires that the Examiner's

rejections employ "reasoned decision making" based on evidence from a fully developed

administrative record. See *In re Lee*, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002).

Patentability determinations which are based on what the Examiner believes is "basic

knowledge" and "common", and that otherwise lack substantial evidentiary support, are

impermissible. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001).

Therefore, Applicants respectfully traverse the rejections of claims 12-15 and 18-

20 on the ground that the aforementioned "Official Notice" lacks "substantial evidentiary

support." Thus, the Examiner is asked to produce substantial evidentiary support (e.g.,

produce a reference) with respect to the subject matter claimed in claims 12-15 and 18-

20, or withdraw the rejection of these claims.

Accordingly, Applicants submit that claims 12-15 and 18-20 are patentable over

the applied reference and the Examiner's Official Notice, alone or in combination.

Therefore, Applicants respectfully request reconsideration and withdrawal of the

rejection of claims 12-15 and 18-20.

Other Matters

Applicants acknowledge with gratitude the Examiner's acceptance of the

drawings in light of previously-entered amendments to the specification filed on August

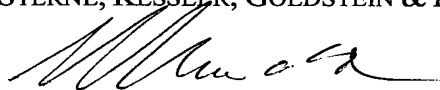18, 2007, as indicated on page 10 of the Office Action.

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Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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